

the Ethical Times

Spring Cleaning

By Alex Kipp

Well, friends, Spring is well and truly here and that means a lot of us are launching into that most favorite seasonal task: de-cluttering our homes. But as we try to maintain a sense of decorum with roommates, spouses, and significant others and not let a winter's worth of passive aggression spill over into whether or not that guitar amp should finally just be left on the curb (it shouldn't, because I WILL play it again, someday), let's also spare a moment to de-clutter our City desks from outside interests that might present a violation of the Conflicts of Interest Law.

First up, we should talk about your files – things stored on City computers, networks, databases, and filing cabinets. (For those of you too young to remember, “filing cabinets” were large, lockable, ugly metal stacks of drawers that could hold just a fraction of what’s on your computer in less-convenient paper form. On the positive side, they were heavy enough to crush a human, so not bad to have if you worked in an office where that was occasionally necessary.)

Now, it’s hard enough keeping all of your City files organized. That task only gets harder when you mix files from your outside job, side business, or outside political activities with your government files at work. If you get into that habit, soon it won’t be clear whether you’re working in a government office where you also do your outside work, or in a private office where you also do occa-

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sional government work. So don’t do that. Keep all materials, files, programs, papers, and conversations related to your outside financial or political activities out of your government files, computers, and especially far away from your City email account and telephone.

Let’s now gently glide from your files to your government Rolodex or, if you’re not 90 years old, the contacts contained within your City edition of the universally-lauded Microsoft Office 365. Simply put: you need to be careful when contacts from your personal network also show up in your official City contacts. Knowing folks isn’t a problem. But making personal business, fundraising, or



political solicitations to someone you have power over in your City capacity is a misuse of your City position.

For example: let's say I have an old buddy from my private sector days (before my City role, I held a fairly senior post at the biscuit station of KFC). My buddy is the kind of stand-up guy I might have hit up for a little fundraising for my kids' school or an important cause dear to my heart, like a not-for-profit that restores old guitar amps so that aging Gen Xers can rock out once again, like they used to, before they had kids and sold out to become government workers. But like me, my old biscuit-making buddy has also moved on. In fact, he's the point person for a vendor with some big matters before my City agency, matters that occasionally come across my desk. I can't send him that personal fundraising email now – obviously not with my City email account, but not with my personal AOL account, either. Like me, you'll want to keep those personal fundraising appeals far away from anyone you've got power over: individuals seeking services from your agency, vendors you deal with, or any City employee below you in the chain of command.

Another thing that can easily clutter a desk is a token of appreciation from any of those people or, as we like to call it in the ethics business, a "gift." The Conflicts of Interest Law has bright-line prohibitions on accepting most kinds of gifts from vendors or anyone over whom we have City power (the info-graphic on the next page summarizes the vendor rules; there's lots more info [here](#)). Moreover, rent is going up. Storage rates are going up. Space is at a premium, especially with all the rocks, sticks, and discarded toys my boys bring home every day. At this point my policy when going to dinner with City vendors is this: not only do I pay for my own dinner, but I always give the vendor a rock, stick, well-loved toy, or dusty piece of probably-still-working guitar gear, making everyone in my home happy and more fully align-

ing my self-image with the person I have allowed myself to become.

Finally, let's talk about those framed photos scattered all over your desk. You know, the ones of your sons, daughters, spouses, registered domestic partners, cats, and the like. Now, there's no problem with that – especially in my own case, where my children are both exceptionally intelligent and strikingly photogenic, at least according to me. In fact, public servants can even work in the very same office as their family members. However, if you were to *supervise* any of those close relatives paraded on your desk like so many little glass collectibles from the cabinet of Laura Wingfield, or be a part of the hiring process that put them there, that would be an issue.

Here's the long and the short of it: keeping a picture of your subordinate on your desk for you to admire is extremely weird if they aren't closely related to you; if they are a close relative, it's not (as) weird, but it *is* a violation of the Conflicts of Interest Law. So best to toss the pictures, put in for a transfer, and self-report your violation to the Board.

Of course, as in the home, cluttering public duties with private interests is best avoided proactively, by never allowing it to accumulate in the first place, or at least removing it the moment it appears. If you've already Marie Kondo-ed your City life from any private interests, then congratulations on both your diligence and your frankly worrying ability to spark joy with purely City-related tasks. And if you ever need help, we're here to help you properly separate your City bin



from your personal bin. You can call our Advice attorneys for confidential legal advice at 212-442-1400 during business hours or ask us your question [online](#).

Alex Kipp is the Director of Education & Engagement at the New York City Conflicts of Interest Board.



Gifts with a total value of \$50 or more considered a Valuable Gift

Public servants cannot accept valuable gifts from:

- A firm doing or seeking to do business with the City
- That firm's employees



❖ Note: many City agencies have stricter gift rules. Check your agency code of conduct.

Attending events in connection with one's official duties should be discussed with your **General Counsel** or **Ethics Liaison**.



Recent Enforcement Cases

Prohibited Ownership Interest & Misuse of City Position. A Purchasing Secretary at the NYC Department of Education (DOE) and her husband co-own a business that sells flowers, including to DOE. In 2018, the Purchasing Secretary misused her City position by processing two purchase orders for her school to purchase a total of \$300 in flowers from her company. To resolve these violations, the Purchasing Secretary paid a \$1,500 fine to the Board in a joint settlement with the Board and DOE. After receiving the Board's charges, the Purchasing Secretary sought and obtained an order from the Board to permit her to continue owning a company that does business with DOE; this order was conditioned on the company not doing any business with the Purchasing Secretary's school and the Purchasing Secretary not participating in the company's future business dealings with the City.

Prohibited Solicitation. In July 2020, the Commissioner of the NYC Department of Veterans' Services (DVS) solicited a donation of \$100,000 to the Mayor's Fund for the City of New York from the owner of a software company that was negotiating a contract with DVS.

The Board adopted Board Rules § 1-14(a) in 2019 to help ensure that a potential donor to the City will not feel that their decision to donate (or not donate) will impact how they are treated by the City.

The Board chose to resolve this matter with a public warning letter because it was the Board's first enforcement action for a violation of Board Rules § 1-14 and in light of the relatively short period of time that elapsed between when that rule took effect and the conduct at issue.

A gift is any thing of value.

Including:

- Meals
- Loans
- Tickets to an event
- Holiday fruit baskets
- Swag bags
- Gift cards

Recent Enforcement Cases

Prohibited Appearances, Misuse of City Time and Resources. Between 2015 and 2018, a NYC Housing Preservation and Development (HPD) Administrative Engineer committed several violations of the City's conflicts of interest law in conjunction with his private engineering work. He attended 10 meetings with NYC Department of Buildings (DOB) plan examiners and auditors related to this work, violating the prohibition against City employees communicating with the City on behalf of private interests for compensation. The Administrative Engineer also misused City time and City resources by:

- Attending nine meetings with DOB during his HPD work hours;
- Using an HPD scanner to scan and email himself 70 documents related to his private engineering work; and
- Using his HPD email account on three occasions to schedule appointments with DOB.

To resolve these violations, the now-former Administrative Engineer paid a \$10,000 fine to the Board.

In setting this penalty, the Board considered that the Administrative Engineer had been advised in 2005 not to engage in such conduct and paid a fine to the Board & HPD in 2015 for engaging in similar conduct.

Misuse of City Position & Misuse of City Resources. A Superintendent in the Pest Control Department at the NYC Housing Authority (NYCHA) ran a website through which he sold clothing and other items. The Superintendent misused his City position when he promoted the website to two of his NYCHA subordinates via a text message. The Superintendent also misused City resources by:

- Using his NYCHA cell phone to send that text message;
- Using his NYCHA email account to send the link to the website to another NYCHA employee;
- Forwarding three emails related to his apparel website to his NYCHA email account;
- Using a NYCHA computer to access the website on four occasions; and
- Listing his NYCHA cell phone number as the website's public contact telephone number.

To resolve his violations, the Superintendent paid a \$1,000 fine to the Board in a joint settlement with the Board and NYCHA.

A **searchable index** of all COIB Enforcement Dispositions is available courtesy of New York Law School.

THE PUBLIC SERVICE PUZZLER

Congratulations to **James Davie Jr.** of DOB, who brews his own beer!



The current **contest** wants you to figure out the final word in three limericks. But good news, procrastinating fans of rhyming verse! We're extended the deadline for submissions to **Friday, June 17th.**



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Phone: (212) 442-1400
Fax: (212) 437-0705